THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P. No.15700 of 2003

ORDER:

This petition is filed questioning the proceedings bearing No.E/50/2002 dated 22-07-2003 of the first respondent in proposing to sell the properties of the petitioner for the default committed by her husband in remitting the dues to the Government.

(2) The contention of the learned counsel for the writ petitioner is that since the petitioner is not a defaulter, her properties cannot be brought to sale for the arrears, or for the defaults committed by her husband and so the impugned proceedings, proposing to sell the properties of the petitioner by auction, under the provisions of the A.P. Revenue Recovery Act, 1864 (for short, 'the Act') are liable to be set aside.

(3) There is no representation on behalf of respondents 1 and 2.

(4) The contention of the learned counsel for third respondent is that inasmuch as third respondent filed a Writ Petition questioning the inaction on the part of the authorities concerned in recovering the amounts misappropriated by the husband of the petitioner, which was allowed by directing the authorities concerned to initiate action against the husband of the petitioner, action was initiated by respondents 1 and 2 in pursuance of that direction and inasmuch as the husband of the petitioner misappropriated more than Rs.2,25,000/- belonging to the Gram Panchayat, and purchased the properties in the name of the petitioner with the misappropriated amount, petitioner in fact is not the real owner of the properties intended to be brought to sale and as the properties being brought to sale were purchased from the misappropriated funds in the name of the petitioner, there are no grounds to interfere with the notice impugned.

(5) As per Section 25 of the Act prior to attachment a Demand

Notice has to be served on the defaulter and if he neglects to pay the amount demanded, procedure mentioned thereafter like, attachment and sale of the properties has to be ordered. So, it is clear that only properties belonging to a defaulter can be brought to sale under the provisions of the Act. Petitioner admittedly is not the defaulter.

(6) A Division Bench of this Court in ***K.Nagaraja Gupta v. The Deputy Commercial Tax Officer and others***[1] held that inasmuch as the proceedings under the Act are analogous to the Rules found in Order 21 C.P.C., in case a claim petition is preferred by a third party objecting to the sale of attached properties, the authorities under the Act have to consider the same. So, if and when her properties are put to sale for the dues of her husband, petitioner can file a claim petition. Question whether the said properties were purchased by the husband of the petitioner in the name of the petitioner from out of the amounts misappropriated by him cannot be decided in this writ petition. Since the first respondent in the notice impugned admitted that items 2 and 3 mentioned in the schedule therein belong to the petitioner, and did not mention as how the property belonging to the petitioner can be put to sale for the arrears due from her husband, the notice impugned in respect of items 2 and 3 is liable to be quashed. As far as item No.1 in the show cause notice is concerned, as the said property admittedly stands in the name of the defaulter, petitioner cannot object to the sale of that property.

(7) Therefore, granting liberty to the petitioner to question the action of respondents 1 and 2 in bringing to sale the properties stand in her name, the Writ Petition is disposed of with direction to the first respondent to consider the representation of the petitioner relating to the sale of items 1 and 2 in the notice impugned after giving opportunity to her. The Writ Petition is dismissed in respect of item No.1 mentioned in the notice impugned. No order as to costs.

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C.Y.SOMAYAJULU, J.

11th December, 2007.

skmr

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

W.P. No.15700 of 2003

Date : 11th December, 2007

BETWEEN:

Smt.T.Sulochana, W/o T.Venugopal,
Hindu, Aged about 45 years,
Residing at Lalkota Village,
Chinna Chintakunta Mandal,
Mahaboobnagar District
.. Petitioner

AND

The Mandal Revenue Officer,
China Chintakunta Post and Mandal,
Mahaboobnagar District and another ..
Respondents

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[1] (1992) 1 ALT 582